

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE FORMAL)	
COMPLAINT OF GREGORY TERINONI)	PSC Complaint Docket 15-1066
AGAINST DELMARVA POWER & LIGHT)	
COMPANY CONCERNING SERVICE)	
TERMINATION FOR NON PAYMENT)	
(FILED JUNE 24, 2015))	

**DELMARVA POWER & LIGHT COMPANY'S
ANSWERING BRIEF IN OPPOSITION TO
PETITIONER'S
MOTION IN LIMINE**

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Dated: September 23, 2015

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NATURE AND STAGE OF THE PROCEEDINGS

This complaint is the result of Delmarva Power & Light Company's ("Delmarva") termination of electric service to Petitioner's residence. Petitioner is an electric customer of Delmarva's and Delmarva discovered that such electric service had been tampered with such that a number of the appliances in Petitioner's home were wired to bypass Delmarva's meter and, therefore, Petitioner was not paying for electric usage associated with those appliances.

Upon termination of electric service, Petitioner filed an *ex parte* request for a temporary restraining order with the Delaware Chancery Court which was ultimately granted. As part of the Chancery Court proceedings, Petitioner was ordered to file a complaint with the Delaware Public Service Commission ("DEPSC"). On June 24, 2015, Mr. Terinoni filed a twenty-one page petition with the DEPSC (exclusive of exhibits) largely setting forth arguments as to why the DEPSC did not have jurisdiction over this complaint.

Among other motions filed by Petitioner, Petitioner has filed a Motion in Lime ("Motion") making a number of objections as to the testimony or other documents that witnesses for Delmarva propose to submit as part of its argument in this complaint.

The Hearing Examiner issued an order instructing Delmarva to respond to all motions on or before noon on September 23, 2015.

This is Delmarva's answering brief to the Motion.

SUMMARY OF ARGUMENT

The DEPSC is an administrative body whose proceedings are governed by the Delaware Administrative Procedures Act. The Act provides very specific provisions as to the manner in which case decisions are handled and provides the agency or its designated subordinate significant authority in determining evidentiary issues. 26 *Del. C.* §10125. As such, the Hearing Examiner is given the authority to make decisions as to the admissibility of evidence and the proper weight to be accorded such evidence. Therefore, it is not necessary to exclude testimony or other evidence prior to the hearing on the complaint as the Hearing Examiner, who is an attorney, can make such rulings during the course of the evidentiary hearing and determine what if any weight to give such evidence, if admitted.

In addition, the DEPSC is not bound by the technical rules of evidence in these proceedings but rather may consider such rules as a guide.

STATEMENT OF FACTS

Petitioner is a licensed master electrician in Delaware. He is a Delmarva customer who receives electric distribution and supply service for his residence at 547 Ashland Ridge Road, Hockessin, Delaware. On February 18, 2014, upon execution of a search warrant with the New Castle County Police, Delmarva determined that Petitioner had been stealing electricity from Delmarva. From Delmarva's records it has determined that such theft relates back to 1994 when electric service was first established for Petitioner's residence.¹ Based upon the findings during the execution of the search warrant, Petitioner tampered with Delmarva's meter and equipment by installed equipment that enabled certain appliances (those with high kwh usage) to bypass the meter and consume electricity without such consumption being metered and billed by Delmarva. Delmarva has determined that Petitioner owes Delmarva in excess of \$100,000 for such stolen electricity. In March of 2015, Delmarva billed Petitioner for such unmetered service.

In June of 2015, Delmarva terminated Petitioner's electric service based upon such theft and Petitioner sought and obtained a Temporary Restraining Order from the Delaware Chancery Court, on June 8, 2015, requiring that Delmarva reconnect Petitioner's electric service. After briefing and a hearing, on June 17, 2015, the Chancery Court entered an order which Renewed the Temporary Restraining Order for a maximum of thirty days, to remain in effect only if the following conditions were met: (1) Petitioner filed a complaint relating to the termination of his electric service with the DEPSC by 5:00 p.m. on June 24, 2015; (2) within 24 hours of satisfying the first condition Petitioner files a notice in the docket in Chancery Court along with a copy of the filed complaint; and (3) the DEPSC does not accept jurisdiction over the complaint. The DEPSC accepted the complaint and by letter dated June 29, 2015, served a copy of the complaint upon Delmarva, advising that the complaint had been docketed as PSC complaint No. 15-1066 and advising Delmarva that it had 20 days to file an Answer to the complaint.

In the meantime, the State of Delaware prosecuted Petitioner for theft of service relating to the theft of electric service. On July 28, 2015, Petitioner was adjudged guilty of theft of service greater than \$1,500, a Class G Felony, for which he was ordered to pay a fine, placed on

¹ Petitioner's residence was constructed in 1993 and first occupied by Petitioner in 1994. Petitioner installed the electric service for his residence.

probation, ordered to be evaluated for substance abuse and ordered to perform 100 hours of community service.

ARGUMENT

The DEPSC is an administrative body whose proceedings are governed by the Delaware Administrative Procedures Act (the “Act”). The Act provides, at Subchapter III, the manner in which agency case decisions are handled. Specifically, the provisions of 29 *Del. C.* §10125 set forth the manner in which such hearings shall be conducted. Subsection (b)(3) of §10125 states that in connection with such hearings, the agency or its designated subordinate may be empowered to: “exclude plainly irrelevant, immaterial, insubstantial, cumulative or privileged evidence”.

Unlike jury proceedings in a court, the formal complaint evidentiary hearing process at the Delaware Public Service Commission (“DEPSC”) is not before a jury of laypersons untrained in according the appropriate weight to evidence, but, rather, is before a Hearing Examiner who, in this case, is trained in the law. As such, the Hearing Examiner has the ability to make rulings as to the admissibility of evidence in these proceedings and accord proper weight to such evidence.

Pursuant to the rules and regulations of the DEPSC, the Commission may consider the Delaware Uniform Rules of Evidence as a guide but, in accordance with 26 *Del. C.* §503 and 29 *Del. C.* §10125, shall not be bound by the technical rules of evidence. *See* 26 *Del. Administrative C.* 1001, §2.13.1. In giving proper weight to the evidence presented, the Commission is to accord to each element such weight as necessary and proper under the facts presented in each particular case. *See In re: Diamond State Tel. Co.*, 49 Del. 203, 113 A. 2d 437 (1955).

As such, there is no requirement for the Hearing Examiner to make a ruling on the Motion as the Hearing Examiner can weigh the evidence presented to him during the hearing and make his determination at that point as to how to treat such evidence as well as the appropriate weight to give such evidence.

CONCLUSION

The Delaware Uniform Rules of Evidence do not apply to these proceedings and the Hearing Examiner is authorized to make decisions as to the admissibility of evidence during the course of these proceedings and to accord such weight to such evidence as he deems appropriate. Therefore, Petitioner's Motion in Limine should be denied.

/s/ Pamela J. Scott

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2015, I caused the attached Answering Brief of Delmarva Power & Light Company in opposition to Petitioner's Motion in Limine to be served by electronic mail on all persons identified below and to be filed with the Delaware Public Service Commission using Delafile.

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